



THE CITY OF NEW YORK  
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January 31, 2022

**BY ECF**

Judge Rachel P. Kovner  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Kyle Freistat v. Daniel Gasperetti, et al., 17-CV-05870 (RPK)(LB)

Your Honor:

I am the Senior Counsel in the Office of Georgia M. Pestana, Corporation Counsel of the City of New York, representing defendants Gasperetti and Arlistico in the above-referenced matter. In accordance with the Court's January 10, 2022 Order, defendants write to provide the Court with a status update; and further respectfully request the following pre-trial filing schedule: 1) Plaintiff to provide defense counsel with his portions of the Joint Pre-Trial Order (hereinafter "JPTO") by April 1, 2022; 2) Parties' JPTO due to the Court by April 22, 2022; 3) Motions *In Limine*, Proposed *Voir Dire*, Jury Instructions and Verdict Sheet due to the Court by May 23, 2022; and 4) Responses to Motions *In Limine* due by June 17, 2022. Due to plaintiff's incarceration status, defendants were unable to confer with plaintiff on whether he consents to the aforementioned proposed schedule.

By way of background, on September 9, 2020 defendants moved for summary judgment pursuant to Federal Rule of Civil Procedure 56. (See Civil Docket Nos. 99- 104). On October 30, 2020, defendants moved the Court to deem their summary judgment motion unopposed and fully briefed, as plaintiff failed to file an opposition or request an extension by the Court's October 14, 2020 briefing deadline. (See Civil Docket No. 105). The Court denied defendants' letter motion, and thereafter granted plaintiff three separate extensions to file his Opposition. (See Civil Docket Nos. 105-107). On January 27, 2021 plaintiff filed a letter purporting to be a response in opposition to defendants' motion for summary judgment. (See Civil Docket No. 108). On February 23, 2021, defendants filed a response to plaintiff's January 27, 2021 letter, wherein defendants argued that plaintiff failed to respond to defendants' 56.1 Statement and further failed to refute any of defendants' arguments. (See Civil Docket No. 109).

On September 29, 2021 the Court granted in part, and denied in part, defendants' September 9, 2020 motion for summary judgment, concluding that "[d]efendants are entitled to summary judgment on plaintiff's allegations that defendants used excessive force before he was handcuffed," however, "summary judgment is denied as to allegations that defendants used

excessive force after he was handcuffed.” (Civil Docket No. 111). Therefore, the only remaining claims to be tried in this matter are plaintiff’s 42 U.S.C. § 1983 Excessive Force claims against defendants Gasperetii and Arlistico, related to the officers’ alleged conduct **after** plaintiff was placed in handcuffs. No trial date has been set by the Court.

Defendants are prepared to proceed to trial and therefore respectfully request the following pre-trial filing schedule: 1) Plaintiff to provide defense counsel with his portions of the JPTO by April 1, 2022; 2) Parties’ JPTO due to the Court by April 22, 2022; 3) Motions *In Limine*, Proposed *Voir Dire*, Jury Instructions and Verdict Sheet due to the Court by May 23, 2022; and 4) Responses to Motions *In Limine* due by June 17, 2022.

Thank you for your consideration of the matters herein.

Respectfully submitted,  
Morgan C. McKinney, Esq.  
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cc: **VIA FIRST- CLASS MAIL**  
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